



1949.

File No. O. Tenancy /49

Legal Department. pt. I

A BRANCH

Subject:—

Opinions under the

Bombay Tenancy Act, 1939

(for the subsequent pps. pl. see pt. II)

P. 104

File No. O. Tenancy /49 pt. I

43 - A

C O N T E N T S

Legal Department File No. O. Tenancy /49 Pt. I

Sr.No.	R.I./O.No.	Subject	Pages.
<u>Bombay Tenancy Act, 1939</u>			
1	<u>12470</u> 31-12-48	Whether order of the Tenancy' Aval Karkun is necessary to terminate a tenancy under Sec. 7 (1)	1-2
2	<u>122</u> 8-1-49	Sec. 24 (1) - whether a Mamlatdar can restore possession to tenant illegally evicted.	3-6
3	<u>120</u> 7-1-49	Sec. 23 (1) (b) --- Application of --- to service inam lands granted for service to village community.	7-8
4	<u>245</u> 11-1-49	Secs. 20 and 40 ----- Relief against termination of tenancy under Sec. 20 --- Whether it would be available until a decree for eviction is passed by the court. Whether it would be possible for Mamlatdar to give such relief under Sec. 24	9-10
5	<u>14823</u> <u>304</u> 8-11-48 10-1-49	Bom. Land Rev. Code Sec. 136-H(1) and 4, vvvv- Bombay Ten. & Agri. Land Act, 1948, Sec. 72----- Whether certified extracts of Record of Rights liable to court fee.	

C O N T E N T S

Legal Department File No. O. Tenancy / 42 Pt. I

Sr.No.	R.I./O.No.	Subject	Pages.
6	<u>14014</u> 20-10-48	<u>323</u> 11-1-49	Secs. 4(1) (b) and 5 (2) - Eviction otherwise than by and order of a competent court for reasons under Sec. 5 (2)
			15-18
7	<u>16155</u> 3-12-48	<u>1174</u> 1-2-49	Whether tenants of agricul- tural lands are to be considered as persons interested within the meaning of Sec. 3 (b) of the Land Acquisition Act.
			19-23
8		<u>1623</u> 12-2-49	Secs. 3, 12(a) and 26 ----- A permanent tenant is a protected tenant within the meaning of Sec. 3 although he enjoys higher rights which are saved by Sec. 26.
			23-24
9	<u>1354</u> 28-1-49	<u>1624</u> 12-2-49	Tenancy Act, 1948 ----- Sec. 32 (d) (e) --- Whether the term " arable land" occurring in-- includes " Kharif " " Rabi " and " Barzhas " lands.
			25-28
10		<u>1737</u> 14-2-49	Sec. 28 ----- stay orders in pending revision applications.
			29-30

CONTENTS.

Legal Department File No. O. Tenancy / 49 Pt. I

Sr.No.	R.I./O.No.	Subject	Pages.
11	<u>1788</u> 14-2-49	Sec. 28 ----- Disposal of pending revision applications.	31-32
12	<u>2103</u> 21-2-49	Sec. 7 (1) ----- Whether Govt. can revise its own orders.	33-34
13	<u>2300</u> 26-2-49	Prohibitory order issued by the Civil Court--- Tenancy Aval Markam should respect the order and report the result of Pulibai's application.	35-36
14	<u>2302</u> 26-2-49	Sec. 24 (1 - A) -- Civil Court power to hear appeals.	37-38
15	<u>16442</u> <u>2321</u> 8-12-48 28-2-49	Secs. 5 (2) (d) and 23 -- Whether Tukappa can claim ten year's tenancy under Sec. 23. Whether Malkappa and Tukappa have any claim as a cultivator of land.	39-42

C O N T E N T S.

Legal Department File No. O. Tenancy / 49 P t. I

Sr.No.	R.I./O.No.	Subject	Pages
16	<u>2332</u> 28-2-49	Possession of Mortgagor whether as a tenant.	43-44
17.	<u>2306</u> 26-2-49	Application of Tenancy Act-- whether the orders passed by the Tenancy Aval Karkun and the Front Officers are valid.	40- 43
18	<u>512</u> 18-1-49	Whether Babagauda has any claim or right to the tenancy -- Tenant from 22-6-39 not a protected tenant.	49-54
19	<u>1945</u> 8-2-49	<u>2383</u> 1-3-49 Disposal of Revision Applications under the repealed Act.	55-58
20	<u>2231</u> 28-2-49	Sec. 24 (1A) -- Whether this Sec. will have application in cases where the Civil Court has given a decree awarding possession.	59-60

C O N T E N T S

Legal Department File No. O. Tenancy / 49 Pt. I

Gr.No.	R.I./O.No.	Subject	Pages.
21	<u>2355</u> 1-3-49	Municipal Lands-- lands held on lease from the Ahmedabad Municipality are exempt from the provisions of the Bom. Tenancy Act, 1948 -- cl. (a) of Sec. 56 (1)	61-62
22	<u>2304</u> 26-2-49	Sec. 24(1A)-- Whether the jurisdiction of the Civil Court is ousted.	63-64
23	<u>2391</u> 1-3-49	Sec. 25 -- Lands held on lease from Court Receiver.	65-66
24	<u>1332</u> 4-2-49	Sec. 18 -- Whether the provisions of --- override the specific rights established by the Talukdar through the Civil Court.	67-70
25	<u>2145</u> 25-3-49	Whether the Tenancy Act will have any application to a tenancy at will	71-74

CONTENTS

Legal Department File No. O. Tenancy / 49 Pt. I

<u>Sr.No.</u>	<u>R.I./O.No.</u>	<u>Subject</u>	<u>Pages.</u>
26	Civ. Ref. No. 5 of 1947 dt. 13-1-44.	Eai Hiraba vs. Baria Pata Samu	75-96
27	<u>2431</u> 2-3-48	Sec. 9 (1) - Restoration of tenancy to heirs of deceased tenant.	97-98
28	<u>2609</u> 7-3-48	Whether H Govt. can set aside in revision the order of eviction of tenants passed by the Tenancy Adal Karkum.	99-100
29	<u>3024</u> 17-3-48	Sec. 12(9) -- Whether a tenant can challenge the order passed by the Smt Civil Judge under Sec. 12(9) by a regular suit.	101-102
30	<u>3244</u> 24-3-49	Whether a refund exgratia is possible. Whether the Tenancy Act, of 1948 will have the effect of overriding the Nazur order.	103-104

CONTENTS

Legal Department File No. O. Tenancy / 45 Pt. I

Cr.No.	R.I./O.No.	Subject	Pages.
31	<u>610</u> 22-1-49	Secs. 3(a), 4 (1) and 2 -- Whether the opponent whose possession was for a period not less than six years continuously within the meaning of Sec. 3(a) can be deemed to be a protected tenant.	105-108
32	<u>2120</u> 23-2-49	Sec. 5 (2)(d) -- Tenancy Act 1948-- Sec. 14(1)(d)--- whether Mamlatdars can allow the landlords to take possession of such vacant lands pending the return of tenants in exercise of their powers under Sec. 5(2)(d)	108-110
33	<u>8787</u> 10-3-49	Sec. 20(3) -- Tenancy Act, 1948, -- Whether pending proceedings before the Mamlatdar or the Collector in appeal are excepted from provisions of sub-sec. (2).	111-112
34	<u>2818</u> 11-3-49	License to cultivate tank beds.	113-114
35	<u>3272</u> 25-3-49	Whether it is necessary for a tenant to apply to the Mamlatdar for a declaration that the transaction made by the landlord in contravention of Sec. 63 of the Tenancy Act, 1948 is void	115-116

C O N T E N T S

Legla Department File No. O. Tenancy / 43 P t. I

Sr.No.	R.I./O.No.	Subject	Pages.
36	<u>13452</u> 25-12-47	Copn. --- Whether there is conflict between Sec. 4(3) and Sec. 23(1) of the Tenancy Act, 1939	117-118
37	<u>3481</u> 31-3-49	Whether protected tenant can be considered an evicted tenant within the meaning of sub-sec. (3) of sec. (4).	119-120
38	<u>3754</u> 7-4-49	Application of Tenancy Act when parties dispute relationship of landlord and tenant	121-122
39	<u>4209</u> 22-3-49	<u>3293</u> 12-4-49 Tenancy Act, 1948 -- Appearance of pleaders before Mamlatdars and Tribunal.	123-126
40	<u>4915</u> 13-4-49	Sec. 23(1)(a) -- Sheri lands whether Sec. would be applicable, the occupying being disposed of by Govt.	127-128

CONTENTS

Legal Department File No. G. Tenancy / 49 Pt. I

Gr.No.	R.I./C.No.	Subject	Pages.
41	<u>5011</u> 14-1-49	Tenancy Act, 1948- whether Govt. can revise order of Front Officer dt. 11-1-49	129-130
42	<u>4737</u> 30-6-49	Whether stay order can be issued by Govt. if power to entertain a revision application not being vested in Govt.	131-132
43	<u>2758</u> 10-3-49	Whether daughter of the deceased tenant is on heir entitled to continuance of the tenancy under Sec. 3(1)	133-134
44	<u>2757</u> 10-3-49	Whether there is any objection to recognizing the applicants as protected tenants.	135-136
45	<u>2813</u> 22-3-49	Whether benefit of Sec. 3 (2) of the Act would be available to the applicant who has surrendered the lease. Whether he can be considered an evicted tenant within the meaning of Sec. 4 (2)	137-138

CO
27/6
K.S.R.
27/6

Office of the R.L.A.

The Revenue Department Office view is not correct.

To terminate a tenancy under section 7 (1) of the Bombay Tenancy Act, 1939 no order of the Tenancy Aval Karkun is necessary. The termination of tenancy would entitle the landlord to sue for possession in Court.

Attention of the Revenue Department is invited to R.L.A.'s opinions Nos. 9921 dated the 23rd October 1948 and 11705 dated the 9th December 1948, wherein the legal position has been fully considered.

Sd/- P.M. Lad.

30/12

Remembrancer of Legal Affairs.

U. R. to R. D. No. 12470, dated the 31st December 1948.

R.D.P.
15/6/56

C.C.

Submitted.

2. The facts of the case are as stated in the order of the Tenancy, Aval Karkun, Kalol, dated 5-2-1948.

One Mr. D.M. Patel of Jantral village had made an application to the Mamlatdar Kalol for possession of S.No. 344 of, Jantral from which he was forcibly and fraudulently dispossessed by Punjalal Nathajibhai and another who were permanent tenants of the Thakore of Shihesa who owns the land. The T.A.K. Kalol who heard the application found that the said Mr. Patel cultivated the Survey No. from 1931 to 1946 and was forcibly dispossessed of the land; and awarded possession of the land to Mr. Patel on 5-2-1948. The grounds that Punjalal has neither given a notice under section 7 nor has he taken possession through Court weighed much with the T.A.K., so also the point that the Tenancy Act does apply as against permanent tenants.

On an appeal by Punjalal Nathabhai and another (No. 7 of 1948) the Collector of Panch Mahals reversed the order of the T.A.K. dated 5-2-1948 on the ground that Mr. Patel was not entitled to possession since he was dispossessed forcibly and that section 5(2) does not enumerate forcible eviction as one of the grounds that entitle a person to possession under section 24 (1).

The Collector of Panch Mahals considers that the tenant should have sought relief in a Civil or Mamlatdar's Court and has by his letter dated 26-8-1948 brought to the notice of Government the hardship to which the tenant would be put to if he is now asked to go to a civil or a Mamlatdar's Court for possession and has requested Government to revise his order if deemed proper.

The R.D. considers that the Collector's view is correct and that his order may not be interfered with. That Department has referred the papers to the R. L. A. for advice whether their view is correct.

R.D.P.
15/6/56.
S.C.

Office of the R.L.A.

**Bombay Tenancy
Act, Section
24(1)**

**Whether a
Mamlatdar can
restore possession
to tenant illegally
evicted.**

The view taken by the Revenue Department is correct. Under section 24(1) of the Bombay Tenancy Act, 1937 the Mamlatdar can restore possession to a tenant entitled to possession under any of the provisions of this Act. The Act contains no provision entitling a tenant to restoration if he is illegally evicted. Consequently section 24(1) will have no application and the tenant D. M. Patel should have approached the Mamlatdar's Court or the Civil Court for possession.

Sd/- P. M. Lad.

S/1

Remembrancer of Legal Affairs.

U.R. to R.D.No. 122 , dated the 5th January 1949.

R.D.P.
15/6/56

B.C.

Office of the R. L. A.

Application of
section 23(1)(b),
of the Bombay
Tenancy Act, 1939
to service inam
lands granted for
service to village
community.

It is true that service inam lands in Gujarath which are granted for service to the village community are not governed by the provisions of the Watan Act, and the R.L.A.'s opinion No 8370 dated 14th August 1947 will have no application. However, what is granted in the present case is not the soil but the land revenue. If so, the lease of the land would in no way be contrary to the Resumption Rules of 1908 which apply in the present case. Consequently, section 23(1)(b) of the Bombay Tenancy Act, 1939, will be applicable, and the lease would be deemed to be for a period of ten years. Moreover, clause (3) of article 98 of Jeglekar's manual permit the continuance of the lease provided the leasee agrees to pay the rent. In case the rent provided for in the lease is disputed to be unreasonable, it would be open to the parties to have it settled under the Bombay Tenancy Act. Consequently, the lease need not be interfered with.

Sd/- P.M. Rao.
5/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 190, dated the 7th January 1949.

R.D.P.
15/6/56

S.C.

Office of the M.A.A.

Bombay Tenancy
Act, 1939.
Sections 20
and 24.

Para. 5 of Mr. Bhatta's letter:- Relief against termination of tenancy under section 20 of the Bombay Tenancy Act would be available only until a decree for eviction is passed by the Court. Since such a decree is already passed by the Court in the present case it would not now be legally feasible for the court to afford the relief to the tenant even though he is prepared to pay the rent in arrears. Nor would it be possible for the Mamlatdar to give such relief under section 24 firstly because he is not the court and secondly because the eviction decree is already passed by the court.

The Nature of inquiry which a Mamlatdar has to do under section 24 would be limited to finding whether the tenancy has been terminated for any of the reasons provided in the Bombay Tenancy Act. The enquiry would not be confidential. The Mamlatdar has to give effect to the decree of the court provided the tenancy has been terminated as provided in the Act.

Para. 6 of Mr. Bhatta's letter:- No circular as desired by Mr. Bhatta appears necessary, as the period of limitation for action under the Mamlatdar's Court Act is prescribed by the Act and is practically known to all.

Sd/- P.M. Lad
y/jh

Remembrancer of Legal Affairs.

U.R. to H.D., No. 345, dated the 11th January 1949.

R.D.P.
15/6/56

S.C.

R. I. No. 14623 dt. 5-11-48

Submitted.

2. On the letter of one Mr. P. R. Phadnis dated 7-11-1947, Government has been considering the feasibility of remitting court fees in respect of stamps which are required to be affixed to certified extracts of Record of Rights annexed to applications to the Mamlatdars under the Bombay Tenancy Act. The Commr., C. D. has recommended that the Court fees chargeable on the certified extracts of records of rights annexed to applications under the Tenancy Acts should be exempted from the stamp duty. The R. D. has raised two questions for consideration, viz-

(1) Whether it is necessary to annex certified extracts from record of rights to an application under the Bombay Act? and

(2) Whether the extracts need be affixed with court fee stamp?

R.D.P.
15/6/56

S.C.

Office of the R.L.A.

Bombay Tenancy Act,
1939.
Bombay Land Revenue
Code, Sec. 135-H (1)
and 4.

Bombay Tenancy and
Agricultural Lands
Act, 1948. sec. 72.

Whether certified
extracts of Record
of Rights liable to
court fee.

Under ----- (1) of section 135-H of the Bombay Land Revenue Code, 1879 a certified copy of an entry in the record of rights, register of mutations or register of tenancies relevant to the land is required to be annexed to every suit or application of the description mentioned in sub-section (4). The authority to whom an application under the Bombay Tenancy Act, 1939 is filed is not a Court and the application is not of the description mentioned in section 135-H, sub-section (4) of the Bombay Land Revenue Code. Consequently it would not be necessary to annex to such application a certified copy of an entry in the record of rights and if annexed, it would be liable to a court fee under Article 9 Schedule I, Court Fees Act, 1870.

The position under the Bombay Tenancy and Agricultural Lands Act, 1948 appears to be different. Under section 72 an application is to be treated as a plaint. Consequently section 135-H, sub-section (1) of the Bombay Land Revenue Code will apply and a certified copy of an entry in the record of rights etc. requires to be annexed to the application and would be exempt from payment of any court-fee (see R. 8856 of 1903 and Haridas V. Subraya 9 Bom. L.R. 885 at p. 888).

Sd/- *[Signature]*
10/1

Commissioner of Legal Affairs.

U.R. to R.D. No. 304. dated the 10th January 1949.

R.D.P.
16/6/56

B.C.

Office of the R.A.M.A.

Bombay Tenancy Act.
sections 4(1)(b)
and 5(2).

Eviction otherwise
than by an order of
a competent court
for reasons under
section 5(2).

It appears that Laxman Mansaram cultivated S. No. 74 of Talvel belonging to Mr. Kisanlal Kunjilal from 1931-32 to 1941 under a lease. On expiry of the term of the lease, the landlord instituted a suit (No. 57 of 1942) against Laxman for possession of the land. The suit was decreed in favour of the landlord. As Mr. Laxman Mansaram did not hand over possession of the land, Mr. Kisanlal instituted execution proceedings and the possession of the land was restored to Mr. Kisanlal by Court bailiff on 26-2-1944. It is thus clear that the tenant, Mr. Laxman Mansaram, cannot be said to be holding the land for a period of not less than 6 years immediately preceding the first day of April 1944 as contemplated by clause (b) of sub-section (1) of section 4 of the Bombay Tenancy Act. As he has however held the said land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1937 and was evicted from such land after 1937 otherwise than by order of a competent Court on any of the grounds specified in section 5(2), he would be deemed to be a protected tenant under section 4(1)(b) of the Bombay Tenancy Act. Since he gave notice under section 4(2) within the prescribed period, he is entitled to possession and it is immaterial whether the landlord has since let out the land to other tenants or has been personally cultivating. Consequently the view taken by the Tenancy Head Karkun in his order dated 2-2-1944 ---

is correct. The view taken by the Prant Officer, Bhusaval Division, in his order dated 24-4-48 in X Tenancy Appeal No. 47/48 that the case is covered ⁶² by section 4(1)(b) of the Act, does not appear to be correct.

Sd/- P.M.Lad.
8/1

Remembrancer of Legal Affairs.

U.R. to R.D..No. 328. dated the 11th January 1949.

R.D.P.
16/6/56

M. C.

L. D. R. I. No. 16155 dt. 3-12-48.

Submitted.

Please see the letter from the Spl. Land Acquisition Officer, Poona at p. 3 ante.

It appears that some agricultural lands, were notified for acquisition under sec. 4 of the Land Acquisition Act, 1894. The tenants of these lands have been cultivating them for a number of years and have also spent money for improvements and have even planted some fruit trees. There is no registered lease but it is stated that the tenants and the landlords admit that the leases were oral and of long standing. Now a dispute has arisen as to the claims and disbursement of compensation and the tenants contend that they are "persons interested" within the meaning of sec. 3(b) of the L. A. Act, 1894. But the landlords deny this contention stating that they might have terminated their tenancies under sec. 7(1) of the B.T. Act, 1939. In this connection the Land Acquisition Officer observes:

"According to sec. 3A of the Tenancy Act a tenant shall be deemed to be a protected tenant on the expiry of one year from the date of the ~~coming~~ coming into force of this Act which is understood to be 11-4-1946 for the Poona District. These lands were notified under sec. 4 of the L.A. Act for acquisition on 3rd December 1946, i.e. before the expiry of the one year time limit prescribed under sec. 3-A and hence the question for consideration is whether on the date of the notification i.e. 3rd December 1946 these tenants are to be deemed "persons interested" in the land within the meaning of sec. 3(b) of the L.A. Act. If not their claims for compensation is not tenable and would be discarded by me.

R.D. does not entirely agree with E his view and the R.L.A. has been requested to advise whether these tenants are to be considered as persons interested within the meaning of sec. 3(b) of the Land Acquisition Act.

R.D.P.
16/6/66

B.C.

Office of the R. L. A.

Seen and returned. The view taken in the Revenue
Department office note dated 29-11-1948 is correct.

Sd/-

P.M. Lual
31/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1174, Dated the 31st Feb. 1949.

R.D.P.
16/6/56

B.C.,

Office of the R. L. A.

The Bombay Tenancy
Act, 1939.
sections 3, 12(9)
and 26.

It is not clear on what point the R. L. A.'s opinion is sought. A permanent tenant is a protected tenant within the meaning of section 3 although he enjoys higher rights which are saved by section 26 of the Bombay Tenancy Act, 1939. Consequently, the view taken by the Civil Judge is correct and his order fixing the reasonable rent shall hold good for five years and cannot be called in question in any Court during that period : see section 12(9); and Government has no power to interfere with his order.

Sd/- P. M. Lad.
11/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1683, dated the 12th February
1949.

R.D.P.
16/6/56

S.C.

L. D. R. I. No. 1354 dated 28-1-1949.

Submitted.

2. In view of the query raised by the President of the Mangada Taluka Congress Committee the question for the R. L. A.'s consideration is whether the term "arable land" occurring in clause (e) of sub-section (6) of sec. 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 includes "Kharif" "Rabi" and "Warkar" lands i.e. lands in which Kharif and Rabi crops are grown.

3. Sec. 32(6)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 provides that the right of a protected tenant under that sec. to purchase from his landlord the land held by him as a protected tenant shall be subject to the following conditions e.g.

(a)

(b) if the protected tenant holds any arable land, as an owner, the purchase of the land by him shall be limited to such area as will be sufficient to make up the area ~~as~~ of the land owned by him to the extent of fifty acres of arable land."

The term arable has not been defined in the B.T. and Agricultural Lands Act, 1948. Under Land Acquisition Act, 1894, the term "arable" was interpreted to mean capable of being ploughed or fit for tillage (vide R.L.A.'s opinion No. 48-Conf1, dated 26-1-1943). Kharif and Rabi lands are those lands where kharif and Rabi crops are grown. Warkar land is understood to mean lands which border principal lands like Rabi or Kharif wherein subsidiary crops like Wari or Nachani are grown. All these kinds of lands are either being ploughed or fit for being ploughed or are fit for tillage and hence they would be covered by the term "arable". The R.D. view is correct. The papers may be "seen and returned."

54/-

R.D.P.
16/6/56

A. A. S.

S.C.

Office of the R. L. A.

The Bombay Tenancy
and Agricultural
Lands Act, 1948.

Sec. 32(6)(a).

Arable land.

Seen and returned.

The view taken in the Revenue Department
office note dated 4-1-49 at page 3 ante is
correct.

Sd/- P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.², No. 1684, dated the 12th February 194

R.D.P.
16/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy
Act, 1939.

Sec. 28.

Stay orders in
pending revision
application.

There would be no legal objection to Government
issuing a stay order in the pending revision
applications.

Sd/- P.M. Ladd.
12/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1737, dated the 14th February 1941

R.D.P.
16/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

Section 28 Disposal
of pending revision
applications.

Reading clause (b) of sub-section (2) sub-section (3) of Section 89 of the Bombay Tenancy and Agricultural Lands Act, 1948 it will be clear that it would be competent for Government to dispose of not only all the revision applications pending on 28th December 1948 but also those filed or to be filed thereafter against orders passed under the Act of 1939 save those arising out of proceedings for the recovery or restoration of possession of the land under section 7 of the repealed Act.

Sd/- P.M. Lad. .
12/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1738, dated the 14th February 1949

R.D.P.
16/6/58

B.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.
Sec. 7 (1).

Although it is open to Government to revise its own order provided it is found to be opposed to law, it appears that the order passed by Government at p. 13 ante is valid, for section 7(2) of the Bombay Tenancy Act, 1939, will have no application when the tenancy was determined not on the ground specified under clause (a) clause (b) of section 7(1) but on the ground of failure to pay rent under section 5(2) and possession was not obtained through Court. Consequently there is no valid ground for Government to revise its own orders at p. 13 ante.

Sd/- P. M. Ladd.

21/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2103, dated the 21st February 1949.

R.D.P.,
16/6/56

A.C.

Office of the R.L.A.

Bombay Tenancy Act,
1939.

In view of the prohibitory order issued the Civil Court the questions raised by Revenue Department for R. L. A.'s consideration do not arise at this stage. The result of Fulibai's application to the Civil Court may be awaited. In the mean-time directions may be issued to the Tenancy Aval Samit Karkun to respect the prohibitory order of the Civil Court and to report the result of Fulibai's application to the Civil Court.

54/- P.M.Lad.
26/2

Remembrancer of Legal Affairs.

U.R.to M.D., No. 2303, dated the 26th February 1949.

R.D.P.
16/6/5

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.
section 24(1-4).

Civil Courts' power
to hear appeals.

The Bombay High Court has recently held in a reference, made by a Civil Judge, that section 24(1-4) of the Bombay Tenancy Act, 1939 would be no bar to obtaining possession by a landlord under the decree of a Civil Court. Consequently the Circular at p. 27 ante would not be in order so far as it relates to decrees of Civil Courts already passed before the new Act of 1948 came into operation. Under the new Act the jurisdiction of the Civil Court is ousted and the question of resisting the execution of a Civil Court decree would not arise. In view of this legal position the Circular at p. 27 ante need not be issued nor need the High Court be consulted in the matter.

Sd/- P.M. Lal.
26/2

Remembrancer of Legal Affairs.

U.R.to R.D., No. 2302, dated the 26th February
1949.

R.D.P.
16/6/56

B.C.

R. I. No. 16442 dt. 8-12-48

Submitted:

2. The facts of the case are as contained in the letter of the Collector of Bijapur dated 22-9-48.

The disputed S.No. 137 of Kerkhalli in Sindgi Taluka is owned by one Mr. B. S. Desai and was let to Mr. Malkappa Ramachandra Talwar during 1946-47. In 1947-48 Malkappa sub-let the S. No. to one Tukappa Sasappa; when crops were ready Malkappa complained that he had cultivated the land personally and thereupon Tukappa filed an application to the Mamlatdar Sindgi for a declaration that he is a sub-tenant. The T. A. K. Sindgi who heard the application found on inquiry on the spot that the disputed land was actually cultivated by Tukappa and ordered his name be entered in the village records as a tenant of Malkappa the protected tenant for the year 1947-48. On appeal by Tukappa the Prant Officer Bijapur Division reversed the order of the T. A. K. on the ground that Revenue Courts cannot decide tenancy disputes. The Collector (Fl. vide his letter dated 22-9-48) is of opinion that the view taken by the Prant Officer is not correct and that by sub-letting, Malkappa's right of tenancy has determined and Tukappa thereby acquires a right to be recognised as a tenant under section 2-A of the Bombay Tenancy Act.

The R.D. considers that neither Malkappa nor Tukappa have any claim as a cultivator of land since the tenancy of the former has been determined under Section 5(2)(d) and the latter is not a tenant of the landlord and as such cannot claim ten year's tenancy under section 23.

The R. L. A. is requested to advise.

R.D.P.
16/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.
Sections 5(2)(d)
and 23.

Seen and returned.

The view expressed in the Revenue Department
office note dated 30-11-1948 is correct. (Cf.
R. L. A.'s opinion No. 8943, dated 21-9-1948).

Sd/- P.M. Lad.
26/2

Remembrancer of Legal Affairs.

U.R.to R.D. No. 2321, dated the 28th February 1949.

R.D.P.
16/6/58

A.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

possession of
Mortgagee whether
as a tenant.

According to the decrees of the High Court the relation between the parties was that of a mortgagor and mortgagee and not that of a landlord and tenant. Consequently Vallabhabhai would not be ~~not~~ entitled to the status of a protected tenant. The order of the Prant Officer may therefore be set aside.

Sd/- P.M. Lach.
26/2

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2332, dated the 28th February 1949.

R.D.P.
16/6/56

S.C.

Office of the R.L.A.

Bombay Tenancy Act,
1939.

Application of

It appears that on Fulsinhji Bharatsinhji Dabhi filed a tenancy application No. 420 of 1947 against Galab Ranchhodji Baraiya for obtaining possession of survey No. 124 on the ground that the latter was neither his tenant nor his protected tenant. The tenancy aval karkun who heard the application held that Galab was neither an ordinary tenant nor a protected tenant and yet ordered his eviction under section 24(2) of the Bombay Tenancy Act. Galab filed an appeal to the Prant Officer against that order without any success. He has now filed a revision application to Government for revising the order passed by the Tenancy Aval Karkun. R.D. considers that although the dispute between Fulsinhji and Galab is not a dispute between a tenant and landlord and as such the Bombay Tenancy Act does not apply, it does not appear necessary to interfere with orders passed by the Tenancy Aval Karkun and Prant Officer as they did no material injustice and simply upheld the Mamlatdar's order passed under the Mamlatdars Courts Act whereby Galab was evicted. R.L.A. is requested to advise whether the view taken by R.D. is correct.

2. If the Bombay Tenancy Act has no application to the present case and it is ~~xx~~ so on the pleadings the orders passed by the Tenancy Aval Karkun and the Prant Officer are ~~xxxx~~ ultra vires and should be set aside.

Sd/- P.M. Lad.
26/2

Remembrancer of Legal Affairs.

U.R. to R.D.No.2306, dated the 26th February 1948

Office of the R. L. A.

Bombay Tenancy
Act, 1939.

Tenant from
22-6-1939
not a protected
tenant.

One Babagauda Chenagauda Patil was the tenant of Survey No. 63 and 126 for a period of five years from 22nd June 1939 and the lease was evidenced by a registered document. Subsequently, the ownership of the lands changed hands and in the partition these lands fell to the share of one Basaprabha Malakappa Katti. On the expiry of the lease Babagauda was continued as tenant of Basaprabha in 1944-45. Then Basaprabha Malakappa sold these lands to Mallappa Parappa Kulloli for Rs. 12,000/- by registered sale-deed, dated 8-10-1945. It was alleged by Mallappa that the lease to Babagauda was an annual lease which expired at the end of March 1946, and thereafter he got into possession of the land; whereas, Babagauda alleged that the second lease after the expiry of the first lease for five years was also for a period of five years, though there was no registered deed in support of it, and that under the Bombay Tenancy Act the lease was deemed to be for a period of 10 years. The Bombay Tenancy Act was applied to the area on 11-4-1946. In view of these circumstances, it appears that there arose a dispute between Babagauda and Mallappa Parappa Kulloli, purchaser of the land, about the right to possession of the lands. Babagauda filed a Kt civil suit No. 116 of 1946 on 16-3-1946 alleging that he was entitled to be in possession of the lands for 10 years by virtue of the provisions of the Bombay Tenancy Act and that he was in possession and prayed for a temporary injunction against the owner Mallappa. The Court after hearing both parties issued a temporary injunction and made the rule absolute on 10-1-1947. The suit was set down for settlement of issues, but thereafter Babagauda intimated the Court that he did not desire to prosecute the suit.

Consequently

Consequently, the suit was dismissed. In the meantime, on 5-9-47 he had applied to the Mamlatdar under the Bombay Tenancy Act for a declaration that he was either a protected tenant or a tenant for 10 years. The application was heard and rejected by the Tenancy Aval Karkun on 20-1-1948 relying mainly on the former landlord's statement to the effect that the lands were given on annual lease to Babagauda and not on five years lease as contended by him. His appeal to the Prant Officer was rejected, but in revision Government set aside the order of the Tenancy Aval Karkun holding that Babagauda must have cultivated the lands. This Order was passed by Government without hearing the owner, though he was promised such hearing. The owner has now applied to Government to revise the previous Order and R.L.A. is requested to advise whether Babagauda has any claim or right to the tenancy.

2. It is undisputed that Babagauda was tenant of the lands for five years from 22-6-1939 and that lease expired at the end of March 1944. It is also undisputed that Babagauda was a tenant of lands for the next two years i.e. 1944-45 and 1945-46. What is alleged is that the lease for the next two years was only an annual lease whereas Babagauda alleges that after the expiry of the first lease of five years he was continued on the lands on a lease for a further period of five years and that this lease was oral. In this connection it would be relevant to refer to the date on ~~which~~ which the Bombay Tenancy Act came to be applied to the area and that date is 11-4-1946. It is apparent, therefore, that by the time the Act came to be applied if the lease was subsisting, it would be deemed to be for a period of 10 years under the Bombay Tenancy Act, otherwise the benefit of that Act would not be

available to Babagauda. Consequently, the question whether the lease was for a period of five years from the end of March 1944 as alleged by Babagauda or the lease was annual as alleged by the owner has assumed importance. Ordinarily, a lease for more than a year requires to be registered. The first lease for a period of five years was, as a matter of fact, registered. It could ordinarily be expected that the next lease would have also been registered if it was for a period of five years, as contended by Babagauda. Further, this question could have been properly and finally dealt with by the Civil Court in the suit filed by Babagauda. He had secured the advantage of interim injunction in his favour. Notwithstanding that advantage, he preferred to withdraw from prosecuting the suit. This circumstance, coupled with the fact that there was no registered lease, would militate against the contention of Babagauda. Apparently, he seems to have set up a lease of five years with a view to take the benefit of the protection of the Bombay Tenancy Act which came to be applied after the expiry of the annual lease. Babagauda cannot be considered a protected tenant and unless he was held to be in possession of the land on a lease subsisting on 11-1-1946, on which date the Bombay Tenancy Act came into operation, no protection of the Bombay Tenancy Act would be available to him. As stated above, the circumstances seem to be against Babagauda's contention that the second lease was for a period of five years and the fact that he withdrew from prosecuting the suit would confirm that inference.

3. Revenue Department decided the revision application of Babagauda without hearing the other side though it was pressed for and assured by Government (see page 50 ante). Ordinarily, it would

be.....

be against the principles of natural justice to decide a case without hearing the party concerned. R.D. should, therefore, hear both the parties and then decide the case finally on merits.

4. During the course of that hearing Babaganda will naturally get another opportunity of explaining the circumstances in para. 2 above which appear against him.

94/- P. M. Ladd.
14/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 512, dated the 15th January 1949.

R.D.P.
19/6/56

S.C.

R.I.No. 1053 dt. 8-2-1949

Submitted.

2. Please see R. L. A.'s opinion No. 512, dated 15-1-1949. The U.S., R.D. observes:

"As regards the point about hearing of parties it will be seen from the letter at p.50 that no definite promise was given to the party and it is upto Government to hear them or not. Government is not bound by any statutory rule or provision, to call either of the parties to a case. Cases are decided by Govt. on merits and it has not been the practice to give any hearing so far as Government is concerned, although it is desirable to hear both parties as pointed out by the R.L.A. on principles of natural justice. As regards the point raised about Govt's power to decide cases after the coming into force of the new Act, the opinion of the R.L.A. thereon has been called for in another case and is awaited. However, there is no objection to refer these papers to that Officer on that points raised by the Office."

The point for R.L.A.'s consideration is whether in view of the provisions of sec. 89 of the Bombay Tenancy and Agricultural Lands Act, 1948 Govt. can review its own order setting aside the order of the Tenancy Awar Karkun, Athani, dated 20-1-1948.

3d/-

R. L. A..

R. D. P.
16/6/53

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

Bombay Tenancy and
Agricultural Lands
Act, 1943.

Disposal of Revision
Applications under
the repealed Act.

Attention of the Revenue Department is invited to R. L. A.'s opinion No. 1732, dated the 14th February 1949 and as pointed out therein it would be competent for Government to review its own order in the present case.

84/- P.M. Ladd.
28/2

Memorandum of Legal Affairs.

U.R. to H.D., No. 2393, dated the 1st March 1940.

R.D.P.
16/6/56

5.C.

Office of the R. L. A.

**Bombay Tenancy
Act, 1939.**

Section 24 (1A)

and view of A of R.D. office note is correct.
The Bombay High Court in a reference made by a
Civil Judge has recently held that section 24(1A)
of the Bombay Tenancy Act, 1939 will have no
application in cases where the Civil Court has
given a decree awarding possession.

B.S. P.M. Lad.
26/2

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2331, dated the 28th February 1949

R.D.P.
18/5/56

S.C.

Order of the R. L. A.

Municipal Lands
Bombay Tenancy &
Agricultural Lands
Act, 1948.

The question raised by Revenue Department for R.L.A.'s consideration is not clear. Lands held on lease from the Ahmedabad Municipality are exempt from the provisions of the Bombay Tenancy Act, 1948 (see clause (a) of section 83 (1) of the Act). Lands held by the Ahmedabad Municipality otherwise than under a lease are not governed by the provision of the Act; and those held by it on a lease are ~~exempt~~ exempt from the provisions of the Act under clause (c) of section 83 (1) and the withdrawal of that exemption under sub-section (2) would ensure to the benefit of the Ahmedabad Municipality.

Sd/- P.M. Lad.
 28/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2389, dated the 1st March 1949.

R.D.P.
 16/6/66

S.C.

Office of the R. L. A.

~~January~~
January 1939
1939.

Sec. 21(1A)

Seen and Returned.

The view taken in the Revenue Department Office note that the jurisdiction of the Civil Court is not ousted is correct (cf. R.L.A.'s opinions Nos. 4639 dated 13-5-48; 6630 dated 15-7-48 and 3921 dated 13-10-48). This is consistent with the view recently expressed by the High Court in a reference made by Civil Judge.

Sd/- P. M. Ladd
 26/1

Remembrancer of Legal Affairs

U.N. to R.D.No. 2304, dated the 26th February
 1949.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

section 25. Lands
held on lease from
Court Receiver.

The view taken in Revenue Department office note at p. 21 ante is correct. Lands held on lease from the receiver appointed by the Resident Magistrate, First Class, Bagalkot in the ~~xx~~ present case are not lands held on lease from the Crown within the meaning of section 25 of the Bombay Tenancy Act, 1939.

84/- P.M. Ladd.
78/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2591, dated the 1st March 1940

R.D.P.
18/6/56

B. C.

Office of the R. L. A.

Right of tenants
over trees -
Bombay Tenancy and
Agricultural Lands
Act, 1948.
sec. 19.

It appears that the tenants of the village Roxad in Prantij taluka have been complaining that the present Talukdar does not allow them the use of the wood of the trees planted by their fathers and forefathers. The Collector of Ahmedabad states that the tenants admit that their rights over trees were decided by the Civil Court in favour of the Talukdar. The question raised for R.L.A.'s consideration is whether the provisions of section 19 of the Bombay Tenancy and Agricultural Lands Act, 1948, override the specific rights established by the Talukdar through the Civil Court.

Section 19 of the Bombay Tenancy and Agricultural Lands Act, 1948, provides:

"If a tenant has planted or plants any trees on any land leased to him, he shall be entitled to the produce and the wood of such trees during the continuance of his tenancy and shall on the termination of his tenancy be entitled to such compensation for the said trees as may be determined by the Mamlatdar."

This is a general provision regarding all tenancies whether protected or unprotected. The words "has planted" in section 19 clearly indicate that this right can be claimed even in respect of trees planted by a tenant or any of his predecessors prior to coming into operation of this Act. Prima facie, therefore, the tenants in the present case would be entitled to the use of the wood of trees planted by their forefathers.

It is stated that the right of the Talukdar to trees had been established in the Civil Court. It appears that this has reference to the decision of the Joint Sub-Judge, Ahmedabad, in Civil Suit No. 1 of 1931. In that suit the plaintiff as mortgagee of certain trees claimed the right to the trees. Obviously therefore the question of right of the Talukdar to the trees in the village was not quite

relevant for the decision of the suit. Moreover, it is stated in the judgement that the Talukdar's right to the trees was based on the proclamation issued by the Collector under sections 102 and 103 of the Bombay Land Revenue Code. These sections which have since been repealed do not empower the Collector to issue any such proclamation. It is not therefore clear from the judgement what kind of proclamation was issued in support of the Talukdar's right to the trees. Further it is not also clear from the judgement whether the right of the Talukdar related to the trees planted by the tenants. Assuming that the Civil Court did hold that the Talukdar proved his right even to trees planted by tenants, the next question for consideration would be whether section 19 of the Bombay Tenancy and Agricultural Lands Act, 1948, overrides such right. "A later Act which conferred a new right would repeal an earlier right if the co-existence of such right would produce inconvenience; for the a just inference from such a result would be that the Legislature intended to take the earlier right away." (see Maxwell, p. 146). The co-existence of a right even to the trees planted by tenants with the right created by section 19 of the Bombay Tenancy and Agricultural Lands Act would be inconsistent and consequently section 19, which confers a new right, namely, on the tenant to trees planted by him, would be deemed to have repealed an earlier right, namely, the Talukdar's right to such trees. The Bombay Tenancy and Agricultural Lands Act does not preserve the rights of landlords which are inconsistent with provisions contained in Chapter II.

.....

In the circumstance, there appears no objection to recognise the rights of tenants to trees planted by them or their forefathers.

Sd/- P.M. Ladd-
3/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1352, dated the 4th Feb. 1949.

R.D.P.
18/6/56

S.C.

R. I. No. 3536 dt. 9-3-49.

Submitted.

2. Please see R.L.A's opinion No. 2174 dated 22-2-1949 wherein it was held that in the disposal of S. No. 12/1 of Bhiledia a ~~XXXX~~ talukdari village in the Panah Mahals district, by auction what was disposed of was tenancy at will and as such it would not create tenancy rights and therefore section 27 of the Ben. court of wards Act will have no application. The R. D. now states that the lands were ordered to be disposed of in December 1946 and as the Bombay Tenancy Act has been in force since 11-4-1946 the tenants are protected tenants and that the question tenancy at will as pointed out ~~the~~ by the R. L. A. does not arise. The R.L.A. is requested to reconsider the protected the tenancy of the auction purchaser.

R.D.P.
18/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

R.L.A.'s opinion
No. 2174, dated
23-2-1949.

The Remembrancer of Legal Affairs sees no reason to reconsider his previous opinion. The Bombay Tenancy Act applies only when the relationship between the parties is that of a landlord and tenant. A tenancy-at-will does not in law create any such relationship. Consequently the Bombay Tenancy Act will have no application to a tenancy at will and the question that the Act was applied to the area before the tenancy at will was created would be immaterial for the purpose.

3d/- P. M. Lad.
22/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3148, dated the 23rd March 1949.

R.D.P.
18/6/56

B.C.

CIVIL Reference No. 3 of 1947.

Bairi Miraba Widow of Patel	)	
	)	
Narsibhai Mathurbhai; and	)	Plaintiffs.
another.	)	
	)	
	)	
Versus.	)	
	)	
	)	Defendant.
Bairi Fata Soma.	)	

Reference made by H. C. Desai, Esquire, Civil Judge (Junior Division) at Borsad and forwarded by the District Judge of Kaira under Order XLVI, rule 1, read with section 113 of the Civil Procedure Code on the following two questions for opinion of this court:--

1. Whether the Civil Court has jurisdiction to try a suit filed by a landlord to obtain possession of a land held by his tenant, in view of the provisions of sub-section (1A) of section 24 of the Bombay Tenancy Act, 1939.
2. Whether the provisions of sub-section (1A) of section 24 of the Bombay Tenancy Act, 1939, have retrospective effect and whether this sub-section applies to pending suits."

The Assistant Government Pleader as amicus curiae.

.....

Coram: Rajadhyaksha and Chh-inani JJ.

15th January 1944.

Final Judgment (per Chairman J.)

This is a reference made by the Civil Judge, Junior Division
erod, under Order XLVI, rule 1, read with sec. 113 of the Civil
procedure Code. The suit, in which the reference has been made, was
iled in his court by the plaintiffs who claimed to be the owners of
he suit land, for possession of that land, arrears of rent and mesne
rofits, alleging that they had leased the land to the defendant, that
he defendant had agreed to pay the rent on 5-1-1946 and to deliver
ack possession of the land on 3-5-1946, and that the defendant had
oiled to pay the rent and hand over possession on the due dates.

The defendant contended that he was protected tenant under the Bombay Tenancy Act, 1939, that there was no breach of the conditions of a tenancy and that the plaintiffs were, therefore, not entitled to recover possession of the suit land. During the pendency of the suit, section 24 of the Bombay Tenancy Act, 1939, was amended, and a new sub-section (1A) was inserted in this section, and this provided as follows:

No landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall ~~must~~ make an application in the prescribed form.

The amendment came into force from 8th November 1946. It was contended before the learned Judge that in view of this provision the suit was no longer competent, and that the plaintiffs, in case they still wanted possession of the land, should apply to the Mamlatdar. The learned Civil Judge was inclined to agree with this view. As, however the suit was a Small Cause Suit, against the decree passed in which no appeal could lie, and as the learned Judge considered the matter to be of considerable importance, he has referred the ~~following~~ following two questions for opinion of this Court:

- "1. Whether the Civil Court has jurisdiction to try a suit filed by a landlord to obtain possession of a land held by his tenant, in view of the provisions of sub-section (1A) of section 24 of the Bombay Tenancy Act 1939?
- "2. Whether the provisions of sub-section (1A) of section 24 of the Bombay Tenancy Act 1939 have retrospective effect and whether this sub-section applies to pending suits?

When the matter came on for hearing before this Court, there was no appearance on behalf of either party. We, therefore invited the Government Pleader to assist us in the matter, and the Assistant Government Pleader has accordingly appeared as amicus curiae.

Since at the reference was made, the Bombay Tenancy Act,

1939, except certain parts thereof, with which we are not concerned in this case has been repealed and a new law, The Bombay Tenancy and Agricultural Lands Act, 1948, has been enacted in its place. Sub-clause (ii) of Clause (b) of sub-section (2) of section 89 of the Act of 1948 provides that nothing in this Act or any repeal effected thereby shall affect or be deemed to affect any legal proceeding instituted before the commencement of the Act, and any such proceeding shall be continued and disposed of as if this Act was not passed. The suit out of which this reference arises, will, therefore, have to be decided by reference to the provisions of the Bombay Tenancy Act, 1939.

Clause (6) in section 2 of the Bombay Tenancy Act, 1939 (referred to in the remaining part of Judgement as "The act defines the term 'Mamlatdar' as including a Mahalkari and any other officer whom the Provincial Government may appoint to perform the duties of a Mamlatdar under the Act. The word "Court" is used in some section of the Act, but it is not defined. Section 12 lays down the procedure which a Mamlatdar should follow in determining the reasonable rent of any land. Sub-section (6) of this section empowers the Mamlatdar to exercise in respect of certain matters, e.g. proof of facts by affidavit the same powers as are vested under the Code of Civil Procedure in a Civil Court. Sub-section (9) of this section states that every order passed by the Mamlatdar under this section, if not appealed against, shall hold good for a period of five years and shall not be called in question in any Court during that period. Section 13 specifies various matters in respect of which applications may be made to a Mamlatdar Sub-section (5) of this section states that any order passed by the Mamlatdar on any such application shall be

deemed to be a decree of a Civil Court and shall be executable as such, see also sub-section (5) of Section 24. It is therefore, clear that the Act draws a distinction between a Mamlatdar and Court, and that a Mamlatdar exercising his powers under the Act cannot be said to be a Court.

It has been held that the provisions, which seek to oust the jurisdiction of a Civil Court, deprive the subject to that extent of the ordinary remedy available to him and must, therefore, be construed strictly. The jurisdiction of a civil Court cannot therefore be said to have been taken away unless there are express words to that effect in the statute or unless the words used in the statute are such that the necessary implication arises that the Legislature intended that a civil court should not exercise jurisdiction in the matter. In this case there is no express provision in the Act that no action for ejectment will lie after the coming into force of section 24(1A). Nor can it be said that the provisions of this sub-section necessarily imply that the Civil Court's jurisdiction in such cases is ousted. On the other hand section 20 provides:

"Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceedings to eject the tenant, the Court shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the suit or proceeding, or to give such security as it thinks fit for making such payment within fifteen days; and if the tenant complies with such direction within 15 days, the Court shall, in lieu of making a decree or passing an order for ejectment pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated."

Before the Act came into force, a landlord had to file a civil suit in order to recover possession from a tenant who had defaulted in payment of rent. It is clear from the words "sues, decree and Court," used in the Act that this right of a landlord has not been

taken away by the Act. The Court is, however, given power to ~~first~~ direct, in ~~an~~ case the tenant pays the rent within 15 ~~days~~ days after he is called upon to do so by the Court, that his tenancy has not terminated. Section 21 states:

"Where any tenancy of any land held by any tenant is terminated on the ground that the tenant has done any act which is destructive or permanently injurious to the land, no suit or proceeding for ejectment against such tenant ~~shall~~ shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury".

A suit for ejectment on the ground that the tenant had done any act which is destructive or injurious to the land will, therefore, be maintainable, if the notice specified in the section is given to the tenant and the tenant has failed to take any action there on within a period of one year. These provisions of the Act, therefore, show that the landlord has to file a civil suit in order to obtain possession on the ground that the tenancy has terminated either for failure to pay the rent or because the tenant has done any act which is destructive or ~~is~~ injurious to the land.

If therefore, a suit for ejectment for breach of the conditions of tenancy ~~can~~ can lie, what is the exact effect of section 24(1A), which provides that no landlord shall obtain possession of any land except under an order of the Mamlatdar? For obtaining such possession he has to make an application in the prescribed form. Rule 14 of the Bombay Tenancy Rules, 1947, prescribes the form in which an application for possession is to be made to the Mamlatdar. The form prescribed is Form No. IX. In this form, after giving the particulars about his name, address and the property of which possession is sought, the landlord has to state in full the circumstances which entitle him to recover possession. Sub-section (2) of section 24 provides

That after receiving such an application, the Mamlatdar shall hold an enquiry in the prescribed manner and thereafter pass such order as he deems fit. The Manner in which the inquiry is to be held is laid down in rule 15, and this rule states that on receipt of an application for possession of any land, the Mamlatdar shall issue notices to the parties concerned to be present before him with their evidence, and that on the day so appointed or any other day to which the proceedings may be adjourned by the Mamlatdar the Mamlatdar shall record the evidence of the parties and their witnesses, if any, present and after taking such further evidence as he may consider necessary, pass such order on the application as he deems fit. Sub-section (3) of section 24 provides for an appeal to the Collector against the Mamlatdar's order. Sub-section (4) of that section states that subject to the provisions of section 25, which gives the Provincial Government the power to exercise the same authority and control over the Collectors & Mamlatdars as they exercise over them in general and revenue administration, every order passed by the Mamlatdar unless modified or revised by the Collector in appeal, and every order passed by the Collector in appeal, shall be final. Sub-section (5) states that every order passed by the Mamlatdar and every order passed by the Collector under this section shall be deemed to be a decree of a civil court and shall be executable as such. It will, therefore, be seen that after receiving an application from a landlord for obtaining possession of a land, the Mamlatdar has to hold a formal enquiry into the circumstances which entitle the landlord to get possession of the land and thereafter pass such order as he deems fit. The order passed by the Mamlatdar, if no appeal is

filed against it, and the order passed by the Collector in appeal are to be executed as if they were decrees of a civil court. The question for consideration is whether this procedure is to be followed in cases in which the landlord has obtained a decree for possession from a civil court. The words of section 24(1A) are undoubtedly wide and unrestricted and would appear to include such cases also. This would, however, lead to a position which we do not think the Legislature could have contemplated. For the position then would be that after obtaining a decree from a civil court in his favour, the landlord will have to apply to the Mamlatdar for obtaining possession of the land. The Mamlatdar will then hold a formal enquiry -- he is bound to do so under the provisions of the Act, when an application is made to him - and then pass such order as he deems proper, which may or may not be in accordance with decree passed by the civil court. Even though the decree has finally determined the rights of the parties, it will not operate as res judicate, and the order which will have final effect will be the order of the Mamlatdar and not that of the civil court embodied in the decree. The decree passed by the civil court will therefore, become inoperative and all the public time and money spent in trying the suit and the expenses incurred by the parties therein will be wasted. We find it impossible to believe that in enacting section 24(1A) the Legislature intended that the right of landlord to obtain possession of land from his tenants should be enquired into by two different tribunals or that after the rights of parties had been adjudicated upon by a civil court, the Mamlatdar should reopen the matter and hold a fresh enquiry in regard thereto. In any case, in the absence of clear and specific words to that effect, we do not think that we

.....

It had been suggested that section 24(1A) should be interpreted to mean that while the jurisdiction of a civil court to pass a decree for possession in favour of a landlord is not ousted such decree can be executed, only through the Mamlatdar, that is to say after obtaining a decree for possession the landlord should apply to the Mamlatdar for getting actual physical possession of the land. This interpretation cannot be accepted, in view of sub-section (2) of section 24 read with rule 15, which require a Mamlatdar to hold an enquiry into the matter before passing an order on an application made to him by a landlord for getting possession of the land, and more particularly in view of the sub-section (5) which provides that the order passed by the Mamlatdar on which such an application shall be executable as a decree of a civil court. A similar argument was advanced before Justices Jaydekar and Jahagirdar in Second Appeal No. 1003 of 1947 but was not accepted.

In our opinion, the only proper interpretation that can be placed upon section 24(1A) when it is read along with the other provisions of the Act, particularly section 20 and 21, which recognise the ordinary right of a landlord to file a suit in ejectment against his tenant, is that it does not apply in cases in which decrees have been passed by civil courts. Landlords frequently obtain possession of their lands from their tenants otherwise than through a civil court, for instance, when a tenant relinquishes or surrenders the lease or when the period of the lease expires and the tenant is willing to hand over possession. Instances are known in which surrenders of leases were obtained by the use of undue influence or other undesirable means.

Similarly, many tenants are not aware of the provisions of section 23 of the Bombay Tenancy Act, according to which every lease of an agricultural land must be for a period of ten years, and no lease can be terminated before the expiry of that period only on the ground that the ~~the period of lease has expired~~ period of lease has expired. It appears that the Legislature wanted to provide that even in such cases the landlord shall not enter upon possession of the land directly, but that he should apply to the Mamlatdar, who will then enquire and ascertain whether the tenant is aware of the rights conferred upon him by the Act whether after being made aware of those rights he is still willing to hand over possession of the land and whether any undue influence or improper pressure had been brought to bear upon him in order to secure surrender of the lease.

It is true that the interpretation of section 24(1A) in the sense indicated above involves a restricted meaning ~~as~~ being given to the general words used in the section. But this is permissible when the language of a statute in its ordinary meaning and grammatical construction leads to inconvenience, hardship or injustice presumably not intended; see Maxwell on Interpretation of Statutes, page 236, 1946 Edition.

Our reply to the first question, therefore, will be that not withstanding section 24(1A) of the Bombay Tenancy Act, 1939, a Civil Court is competent to try a suit filed by a landlord to obtain possession of a land held by his tenant, and that section 24(1A) applies only in those cases in which a landlord seeks to recover possession from his tenant otherwise than by a virtue of a decree of a civil court. In this view the second question referred to us does not arise.

The question as to what extent or in what respect the position as stated above has been altered after -

the coming into force of Bombay Tenancy and Agricultural Lands Act, 1948 is a matter on which we express no opinion.

In view of the delay, which has already taken place in this case, a copy of the judgment should be sent to the Civil Judge, Junior Division, Wersad, as soon as possible, and he should be instructed to dispose of the suit pending before him at a very early date.

By order of the Court.

Deputy Registrar.

R.D.P.
18/6/56

B.C.

Office of the R. L. A.

restoration of tenancy
of heirs of deceased
tenant.

Bombay Tenancy Act,
1939,
section 9(1)

The view taken by R. D. does not appear to be correct.

On a notice being given under section 9(1) of the Bombay Tenancy Act by the heir of a deceased protected tenant that he is willing to hold the land on such terms and conditions on which the deceased protected tenant was holding it at the time of his death, the landlord shall be bound to continue the tenancy to such heir on the same terms and conditions. It follows from this provision that on a notice being thus given the heir of the deceased protected tenant would be entitled to get possession of the land with the result that the old protected tenancy would be deemed to have revived with all its rights and liabilities. It is true that if in the meantime the landlord has leased out the land to another tenant, that lease would be deemed to be for a period of ten years under section 23. But by virtue of a notice given under section 9(1) the protected tenancy is revived and consequently the landlord's rights under the lease to the new tenant would be deemed to be extinguished and thus that lease determined upon the principle of section 111 clause (e) of the Transfer of Property Act. Consequently, the heir of the protected tenant would be entitled to take possession from the new tenant notwithstanding the provisions of section 23. Government Circular No. 6642/45, dated the 13th March 1948 will have no application to such a case.

There would, therefore, be no legal objection to restoring possession to the heirs of the deceased protected tenant in the present case.

34/- P.M. Lach.
1/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2431, dated the 2nd March 1949

R.D.P.
18/6/56

B. C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

The view taken by the Revenue Department is correct. The order of eviction of tenants passed by the Tenancy Aval Karkun and confirmed in appeal by the Prant Officer, being without jurisdiction, may be set aside by Government in revision.

Sd/- P.M. Ladd.
5/3

Remembrancer of Legal Affairs.

U.P. to R.D., No. 2609, dated the 7th March 1949.

R.D.P.
18/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.

Sec. 12 (g)

Under section 12(9) of the Bombay Tenancy Act, 1939, an order passed by the First Class Sub-Judge ~~fixing~~ (i.e., Civil Judge, Senior Division) in appeal shall hold good for a period of five years and shall not be called in question in any court during that period. The expression "shall not be called in question in any court" in section 16(1) of the Defence of India Act, was interpreted in *Tan Bug Taim v. Collector of Bombay* (47B.L.R. p.1010). Unless the order is made in colourable exercise of the power conferred by or under the Act or is made for a collateral purpose and not bonafide it will be ~~un~~ protected under the section. It would be very difficult for a tenant to contend that the Civil Judge in fixing the reasonable rent did not act in accordance with powers conferred on him by or under the Bombay Tenancy Act. It appears that it would, therefore, be extremely difficult for a ~~tenant~~ tenant to challenge the order passed by the Civil Judge under section 12(9) of the Bombay Tenancy Act by a regular suit. It is, however, open to a tenant, if he feels aggrieved by the order passed by the Civil Judge, to approach the High Court under section 115 of the Civil Procedure Code, although in all probability the High Court would not entertain such revision application.

Ed/- P.M. Ladd.

1913

Remembrancer of Legal Affairs.

R.D.P.
18/6/56
S.C.

U.R. to R.D., No. 3086, dated the 19th March 1949.

Office of the R. L. A.

A refund exgratia is possible provided that the revenues of the integrated States do not form part of the Provincial revenues. (See R.L.A.'s opinion No. 23/ Conf., dated 25-5-1946 and Adv. General's opinion No. 10 1943).

The Bombay Tenancy and Agricultural Lands Act, 1948, will have the effect of overriding the Mutar order in so far as it relates to rights to trees planted by tenants. The tenants should however be advised to apply to the Mamlatdar to have their rights determined under section 18.

sd/- P.M. Lad
24/3

Remembrancer of Legal Affairs.

U.R. to H.D., No. 3255, dated the 25th March 1949.

R.D.P.
18/6/56

E.C.

MAHARAJA RAJA RAJA RAJA

Bombay Tenancy Act,
1939.

Section 3(a), 4(1)
and (2)

The opponent appears to claim to be a protected tenant of S.No. 47/2, S.No. 222/1, and S.No. 247/2 of Vivare Khd. and the Prant Officer has recognised his claim in respect of these Survey Nos. Admittedly he cultivated S.No. 47/2 from 1943-44 to 1946-47. His possession not being continuously for a period of not less than 6 years as provided in section 3(a) of the Bombay Tenancy Act, 1939, would not make his tenancy protected. Consequently his claim for being a protected tenant of this land is not tenable. So far as the other two Survey numbers of the village Vivare Khd. are concerned he cultivated them from 1939 to 1946-47. His possession was therefore for a period of not less than six years continuously within the meaning of section 3(a) of the Bombay Tenancy Act, 1939. He can therefore be deemed to be a protected tenant of these two lands and the view taken by the Prant Officer in respect of these lands is correct.

2. The opponent was in possession of S.No. 146/1 of Chinawal from 1932-33 to 1942-43 and of S.No. 118 of Vadgaon from 1931-32 to 1942-43. As he was evicted from these lands, his claim to protected tenancy would be governed by section 4(1) of the Bombay Tenancy Act. So far as the land of Chinawal is concerned, his possession would not be for the full period as prescribed either under clause (a) or clause (b) of section 4(1). But with respect to the land of Vadgaon, the period of his possession being not less than six years immediately preceding the 1st day of

April 1937 as provided in clause (a) of section 4(1) he would be deemed to be a protected tenant and could claim restoration provided he gave a notice within one year of the Act being applied to the area as provided in section 4(2). The notice given the village officers would not be a proper notice under section 4(1) and the view taken by the Prant Officer in this respect is not correct. It appears from the notice at p. 39 of the File No. 1 that the opponent claimed restoration of certain survey numbers but he has not mentioned S. No. 118/2 of Vadgaon. Consequently, that notice cannot be relied upon for the purpose of claiming restoration of possession of S.No. 118 of Vadgaon. In the circumstances, the Prant Officer's order may be upheld in respect of S.Nos. 247/2 and 222/1 of Vivare Kh. and his order in respect of the other lands will have to be set aside.

Sd/- P.M. Lad.

21/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 810, dated the 22nd January 1949.

R.D.P.
18/6/53

B.C.

Office of the R. L. A.

The Bombay Tenancy Act,
1939, section 5(2)(d)

The Bombay Tenancy and
Agricultural Lands
Act, 1948.
Sec. 14(1)(d).

In view of the peculiar circumstances there would be no legal objection to the Kamintars in exercise of their wide powers under section 5(2)(d) of the Bombay Tenancy Act, 1939 (section 14(1)(d) of the new Act), allowing the landlord to take possession of such vacant lands pending the return of tenants subject to the conditions that they would restore the lands with crops if any to the tenants on payment of costs of cultivation.

24/- P.M.Lad.
26/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2330, dated the 23rd February

R.D.P.
15/5/46

S.C.

Office of the R.L.A.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

Sec. 39(3)

The view taken by the Revenue Department is correct. Under sub-section (3) of section 39 of the Bombay Tenancy Act, 1948 only the pending proceedings before the Mamlatdar or the Collector in appeal are exempted from the provisions of sub-section (2). Consequently the revision applications filed against the orders of the Collector passed before 23-12-1948 can be entertained by Government but not those filed against the order of the Collector passed on or after 23-12-1948.

Sd/- P. M. L. adl.
10/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2737, dated the 18th March 1949.

R.D.P.
18/6/56

S.C.

Office of the R.L.A.

Licence to cultivate
tank beds.

The Collector and T.S.O., Ahmedabad may allow persons to cultivate tank-beds etc. of the Gangad estate as ~~licensees~~ on payments of some ~~fix compensation~~, for to allow such cultivation free of rent in the form of compensation would involve a breach of his duty as T.S.O. It should be made clear to the persons concerned that they are mere licensees and liable to be evicted without notice.

Sd/- P.M. Lad^{10/3}

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2818, dated the 11th March 1949.

R.D.P.
18/6/56

S.C.

Office of the R. L. A.

The view taken by the Revenue Department is not correct. It is not necessary for a tenant to apply to the Mamlatdar for a declaration that the transaction made by the landlord in contravention of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, is void, as for no such declaration is in law necessary when the transaction is ab initio void and creates no rights in favour of the vendee. Under section 64 a tenant is not entitled to ask the landlord to sell the land as his right to priority arises only when the landlord proposes to sell the land. All that the tenant can therefore do is to continue to enjoy the land ignoring the sale transaction which is void under section 63(1). The vendee cannot get the possession of the land and if he manages to get such possession, he can be summarily evicted under section 84. The tenant should, however, offer the rent to the original landlord.

Sd/- P. M. Lad. 1-
24/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3279, dated the 25th March 1949.

R.D.P.
18/6/56

B.C.

Office of the R.L.A.

The view taken by the Collector, Belgaum that there is conflict between Section 4(2) and section 23(1) of the Bombay Tenancy Act, 1939, is correct and it appears necessary to amend the Act.

Sd/- P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.^U.No. 13458, dated 29th December 1947.

R.D.P.
18/6/56

S.C.

Office of the R. L. A.

Bombay Tenancy Act,
1939.
Section 4(2).

The view taken in R.D. office note at page 15 ante is correct. Reading sub-section (2) sub-section (1) of section 4 of the Bombay Tenancy Act, 1939, it will be clear that an evicted protected tenant is one who has been evicted otherwise than by an order of a competent authority on any of the grounds specified in section 5(2). It is true that the protected tenant in the present case was not evicted by an order of a competent authority; but to constitute eviction there must be some unlawful interference by the landlord with the leasee's enjoyment of the land (see Mulla's Transfer of Property Act p. 662). The resumption of the demised land by the landlord or the surrender of such land by the leasee on the expiration of the lease as in the present case would not amount to eviction of the leasee. Consequently the protected tenant in the present case cannot be considered an evicted tenant within the meaning of sub-section (2) of section 4 and would not be entitled to restoration.

Sd/- P.M. Ladd.
30/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3491, dated the 31st March 1949.

R.D.P.
18/6/56

S.C.

Office of the R. L. A.

Application of Tenancy
Act when parties
dispute relationship
of landlord and
tenant.

Bombay Tenancy Act,
1939.
R.L.A.'s opinion
No. 2306, dated
26-2-1949.

From the Report of the Prant Officer,
Virangan Prant, it is apparent that both the
parties to the proceedings, the Inamdar as
well as the Khatadars, are disputing the
relationship of landlord and tenant. If so,
it is clear that the Bombay Tenancy Act has
no application and the parties will have to
be left to have recourse to a civil court
which alone will be competent to decide their
rights. (Cf. R. L. A's opinion No. 2306,
dated 26-2-1949.)

Sd/- P.M. Laol,
6/4

Membrancer of Legal Affairs.

U.R. to R.D., No. 3754, dated the 7th April
1949.

R.D.P.
19/6/56

B.C.

L.D.R.I.No. 4209 dt. 22-3-49

Submitted:

Please see R. L. A's opinion No 7608 dated the 3rd November 1944. The short question that is now raised in these papers is whether pleaders can appear in proceedings before the Mamlatdar or the Tribunal under the Bombay Tenancy and Agricultural Lands Act, 1948.

R.D.P.
19/6/56

B.C.

Office of the R.L.A.

Appearance of pleaders
before Mamlatdars and
Tribunal.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

The view taken by R.D. is correct.

Although the Mamlatdar and the Tribunal under the Bombay Tenancy and Agricultural Lands Act, 1948 exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act, 1906 and follow the provisions of the said Act, they would not be considered as Mamlatdar's Court (see Spring Mills Ltd. v. Ambekar, 51 Bom. L.R. 148). Consequently the pleaders would not be entitled to appear before the Mamlatdar or the Tribunal under the Bombay Tenancy and Agricultural Lands Act.

Sd/- P. M. Lach
11/4

Remembrancer of Legal Affairs.

U.P. to R.D., No. 3993, dated the 12th April 1949

R.D.P.
19/6/56

B.C.

Office of the R. L. A.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

Sec. 38(1)(a).
Sheri Lands.

Seen and returned.

The occupancy of Sheri lands being disposed
of by Government, section 38(1)(a) of the
Bombay Tenancy and Agricultural Lands Act, 1948,
would not be applicable and these heri lands
would be governed by the Act.

Sd/- P.M. Lad.
12/4

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4015, dated the 13th April
1949.

R.D.P.
19/6/56

E.C.

Office of the R.L.A.

Whether Government can
revise order of P.O.
dated 11-1-1949.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

R. L. A's opinion
No. 2787, dated
10-3-1949.

The view taken by the Revenue Department
office is correct. (See R.L.A's opinion No.
2787, dated 10-3-1949). If the order passed
by the Prant Officer is ultra vires, it can
be set aside by the Revenue Tribunal and
Government will have no power to interfere with
it.

Sd/- P.M. Ladi.
13/4

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4096, dated the 14th April
1949.

R.D.P.
19/6/56

S.C.

Office of the R. L. A.

Power to entertain a revision application in the present case not being vested in Government, no stay order can be issued by Government.

Sd/- P. M. Lad,
30/4

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4737, dated the 30th April
1949.

R.D.P.
19/6/56

S.C.

Office of the R. L. A.

The view taken by Revenue Department is not correct. Sub-section (1) and sub-section (3) of section 9 of the Bombay Tenancy Act, 1939, have to be read together. The Applicant, being the daughter of the deceased tenant, is not an heir who is entitled to continuance of the tenancy under section 9(1).

Sd/- P.M. Ladd
9/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2752, dated the 10th March,
1949.

R.D.P.
19/6/56

B.C.

Office of the R. L. A.

Pending the decision of the High Court there would be no legal objection to recognising the applicants as protected tenants. In the meantime the applicants should be asked to press in the appeal before the High Court their claim for being treated as protected tenants under the Bombay Tenancy Act and if they fail, the legal position will have to be reconsidered in the light of the High Court decision.

Sd/- P.M. Ladd.

9/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2757, dated the 10th March 1949.

R.D.P.
19/6/56

S.C.

Office of the S. L. A.

**Bombay Tenancy Act,
1939.**

Whatever may be the reason, the applicant admits having surrendered the lease and this surrender having taken place before the Bombay Tenancy Act, 1939, was applied to the area, the benefit of section 7(2) of that Act would not be available to the applicant, nor can he be considered an evicted tenant within the meaning of section 4(2). Consequently the view taken by the District Deputy Collector in appeal is correct.

- 34/- P.M. Leol.

19/3

Membraneer of Legal Affairs.

U.R. to R.D., No. 3113, dated the 22nd March 1949.

R.D.F.
19/6/56

S.C.